ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Federal-State Joint Board On Universal Service	)	CC Docket No. 96-45
	)	

To: The Commission

PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

Columbia Communications Corporation, by counsel and pursuant to Section 1.429(d) of the FCC's Rules, hereby seeks reconsideration and/or clarification of the Commission's Report & Order in the above-captioned proceeding. *See Federal-State Joint Board on Universal Service,* FCC 97-157, slip op. (released May 8, 1997) ("Report & Order"). Columbia believes that the Report & Order requires illumination or modification in two critical respects.

First, the Commission appears to have adopted a sweeping requirement under its permissive authority over "other providers of telecommunications" which would extend the requirement to pay into the universal service fund ("USF") to many entities that do not offer telecommunications services, i.e., non-common carriers, including even providers of bare satellite capacity. While it may be appropriate for some private carriers to make USF payments, Columbia requests that the Commission clarify that it did not

95665/071797/04:31

0+11

intend to impose this requirement on satellite operators that do not offer PSTN carrier services.

Alternatively, the Commission should reconsider the impact of such a requirement based on the information provided by Columbia in this petition for reconsideration.[1/] Principally, it is inappropriate for private satellite carriers to defray the costs of providing universal service because they do not benefit from the extension of access to core telecommunications services, such as voice telephony. Just as significantly, unlike telecommunications carriers, satellite operators are substantially constrained in their ability to pass along new costs because of their reliance on long-term contracts, and would thus be uniquely harmed by imposition of such a requirement.

Second, the Commission has clearly announced its intention to base USF payments upon revenues generated not only from "interstate telecommunications," as provided for by the 1996 Telecommunications Act, but also those arising from international transmissions. This approach, in addition to conflicting with the statute, is

---

1/ To the extent that arguments contained in this petition have not previously been presented to the Commission by other parties, it is because the issues raised were not directly implicated by the Joint Board's Recommended Decision, 12 FCC Rcd 87 (1996), on which parties were asked to comment last Fall. The Recommended Decision advised the Commission to impose USF payment requirements only on those service providers mandated by the Act, i.e., common carriers, and did not propose inclusion of international revenues for the purpose of determining contributions. For this reason, Columbia did not participate in that phase of the proceeding. Columbia's petition is premised on aspects of the Commission's Report & Order that differ from the advice contained in the Recommended Decision.

fundamentally inconsistent with the Commission's stated desire to achieve "competitive neutrality" in the implementation of universal service requirements. In particular, Columbia and other similar companies, which primarily offer capacity for international transmissions, will be disadvantaged by the fact that it also offers capacity to domestic interstate users. Based on the Commission's current formulation of the USF payment obligation, Columbia would thus be assessed fees based on its total end-user revenues for both interstate and international transmissions, whereas competitors that provide only international service — in particular, Atlantic and Pacific ocean region satellite systems licensed by foreign governments — would owe nothing.

Columbia believes that these discrete and relatively straightforward issues can and should be dealt with quickly by the Commission, and need not await an omnibus decision on all of the universal service issues concerning which parties are likely to seek reconsideration. Accordingly, Columbia respectfully requests expedited action on this petition.

Discussion

I. The Commission Should Clarify That Providers Of Space Segment Capacity That Do Not Provide Telecommunications Services Are Not Subject To Universal Service Support Obligations.

In its Recommended Decision, the Joint Board determined not to expand the scope of entities required to pay into the USF beyond those it categorized as telecommunications carriers providing interstate telecommunications services, as defined in the statute.[2] However, the Joint Board also narrowly construed those providers of "telecommunications" not falling within the statute's mandatory as consisting of "entities that provide telecommunications that meet the entity's internal needs or that are provided free-of-charge."[3] It further noted its conclusion that these providers should be exempt because they "do not substantially benefit from the PSTN."[4]

While the logic of the Recommended Decision was sound, it had the anomalous aspect of failing to classify those entities that are not telecommunications service providers but do offer telecommunications capacity to the public for a fee. The Commission attempted to resolve this peculiarity by exercising its "permissive authority" under the statute to broadly extend the payment requirement to all "other providers of telecommunications" that were not specifically identified as exempt under the Joint Board's definition.[5]

This dragnet approach itself has anomalous consequences, which the Commission should address in a clarifying Order. Specifically, the mechanism adopted

---

2/ *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 87, 485-86 (¶ 794) (1996) ("Recommended Decision").

3/ *Id.* at 486.

4/ *Id.*

5/ *See* Report & Order, FCC 97-157, slip op. at 408 (¶¶ 794-795).

in the Report & Order would extend the requirement to pay into the USF to entities that do not offer telecommunications services, including even providers of bare satellite capacity. Columbia requests that the Commission clarify that it did not intend to produce such an unwarranted result.

In this connection, Columbia believes that the most salient aspect of the Joint Board's Recommended Decision was not its attempt to identify the particular types of operators that would be subject to or exempt from USF payments, but its delineation of the over-arching principle that providers that "do not substantially benefit from the PSTN" "should not be required to contribute to support mechanisms."[6] This principle acknowledges that the purpose of universal service support is to subsidize the extension of basic services to rural and other underserved areas by imposing charges upon those service providers that benefit from the broad availability of PSTN service, who are then able to recover a portion of these charges by spreading it across wide customer bases.

Satellite operators and others selling space segment capacity, such as Columbia, do not fall within the category of PSTN beneficiaries, and it is therefore inappropriate for these companies to be charged to help defray the cost of providing universal service. While those service providers that provide common carrier service or provide private lines that interconnect with the PSTN benefit demonstrably from the wide

---

[6] Recommended Decision, 12 FCC Rcd at 486 (¶ 794).

availability of telephone and other core telecommunications services, satellite space segment providers do not unless they are themselves engaged in providing PSTN carrier services.

Satellite operators do not sell their services to a high volume of end-user customers, but instead contract individually with users that employ space segment capacity for a variety of purposes. These users typically control how particular transponders are utilized, and also handle uplink and downlink connections at each end. To the extent that these service providers ultimately use this capacity for provision of voice telephony and other services within the scope of essential "universal service," the service providers themselves pay into the USF. Other services provided via satellite, such as video transmission, have no connection to the PSTN, and therefore derive no benefit from the scope of that network — yet paradoxically, video links constitute the principal type of "end-user"service for which satellite operators <u>would</u> be required to pay into the USF under the current formulation.

Moreover, while telecommunications carriers can easily pass along new USF levies by modifying their tariffed rates, satellite operators are much more constrained in their ability to pass along new costs. This is so because satellite operators customarily enter into individualized, long-term contracts with their customers, which do not anticipate imposition of additional charges. Satellite companies would thus be uniquely and substantially harmed by imposition of new USF payment requirements which they would likely have difficulty passing through to customers.

II. The Commission's Statutory Authority Does Not Permit It To Extend The Reach Of The Universal Service Support Mechanism To Encompass Revenues From International Services.

An additional troublesome aspect of the Commission's Report & Order is its determination to base USF payments upon revenues generated not only from "interstate telecommunications," as provided for by the 1996 Telecommunications Act, but also those arising from international transmissions.[7] The Commission premises its authority to proceed in this manner on Section 2(a) of the Act, which grants the Commission "sole jurisdiction over interstate and foreign communications."[8]

The flaw in this logic is that, while Section 2(a) makes specific reference to both interstate and foreign communications, it contains no delegation to the Commission of authority to impose charges for the purpose of funding universal service support.[9] Where this power is delegated to the Commission, in Section 254 of the Act, it is expressly limited to provision of "interstate telecommunications services."[10] Thus,

---

7/ *See* Report & Order, FCC 97-157, slip op. at 427-428 (¶ 836).

8/ *Id.*

9/ *See* 47 U.S.C. § 152(a).

10/ *See, e.g.*, 47 U.S.C. § 254(d).

Section 2(a), rather than providing support for the Commission's position, actually demonstrates that when Congress intends for the FCC's authority to extend to both interstate and international traffic, it states this intention in clear, precise terms.[11/] The Commission is therefore without legal authority to include international revenues as part of the basis for determination of USF payments.

The Commission's announced approach is also fundamentally inconsistent with its stated desire to achieve competitive neutrality in the implementation of universal service requirements.[12/] In particular, if USF requirements were imposed on U.S. international satellite operators such as Columbia, these private carriers would be disadvantaged in competition with other international satellite carriers by the fact that they also offer capacity to domestic interstate users. Based on the Commission's current formulation of the USF payment obligation, Columbia would be assessed fees based on its total end-user revenues for both interstate and international transmissions, whereas competitors that provide only international service — in particular, Atlantic and Pacific

---

11/ *See, e.g., Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-3 (1984). *See also Alabama Power Co. v. U.S. E.P.A.*, 40 F.3d 450, 456 (D.C. Cir. 1994) *quoting Alabama Power Co. v. Castle*, 636 F.2d 323 (D.C. Cir. 1979) ("neither this court nor the agency is free to ignore the plain meaning of the statute and to substitute its policy judgment for that of Congress").

12/ *See, e.g.,* Report & Order, FCC 97-157, slip op. at 26 (¶ 47).

ocean region satellite systems licensed by foreign governments — would owe nothing.[13/] Because the majority of Columbia's revenues are derived from international transmissions, the USF payment requirement described in the Commission's Report & Order would substantially damage its ability to compete and would distort competition in the market for international satellite services. Indeed, in addition to conflicting with the Commission's stated approach, this inequity is fundamentally inconsistent with the statutory command that the fees be implemented "on an equitable and nondiscriminatory basis."[14/]

Conclusion

Based on the foregoing discussion, Columbia urges the Commission to issue an Order on an expedited basis clarifying that private carrier providers of space segment capacity under private contracts will not be subject to universal service support requirements. Additionally, Columbia suggests that the Commission reconsider its decision to include international revenues in the basis for calculation of USF

13/ Foreign satellite systems, such as Intersputnik and JCSat, already provide services to and from U.S. points, and the numbers of foreign spacecraft that compete on U.S. international routes can only be expected to increase in coming years as a result of domestic U.S. regulatory changes (*see Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, FCC 96-210, slip op. (released May 14, 1996)), and multi-lateral trade agreements such as the February 1997 WTO agreement concerning Basic Telecommunications.

14/ *See* 47 C.F.R. § 254(d).

contributions, as inclusion of these non-interstate revenues conflicts with the statutory language granting the Commission authority to reform the universal service support mechanism. If applied to international satellite operators, such an approach would also have market distorting consequences because many international satellite service providers would not be subject to these charges.

Respectfully submitted,

COLUMBIA COMMUNICATIONS CORPORATION

By: David S. Keir

Raul R. Rodriguez
David S. Keir

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, D.C. 20554
(202) 429-8970

July 17, 1997

Its Attorneys